IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2899 OF 2003

Ghatkopar Prem Kanku Co-op.
Housing Society Ltd. Plaintiffs

versus

M/s.Shah Builders & others Defendants

Mr.Chetan Kapadia with Ms.Yogini D. Gada with Mr.Nehal Gada i/by M/s.Harckchand & Co. for plaintiffs.

Mr.K.Narayanan i/by Narayanan & Narayanan for defendants 1, 3 and 4.

Mr.D.H.Mehta with K.H.Gaikwad for defendants 5 to 7.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th July 2005

PC :

1. The plaintiff co-operative housing society and defendants 1, 3 and 4 have settled the matter between themselves and have tendered terms which are taken on record and marked "X" for identification. The Chairman, Secretary of the plaintiff society and the partners of first defendant as well as directors of defendant no.4 along with their advocates have signed these terms. The parties are present in Court. They

agree to the terms which are incorporated. The undertakings given are accepted. By the terms it is provided that disputes between plaintiff, defendants 1, 3 and 4 would stand settled and respective obligations cast by these terms would be carried out in the manner incorporated in the terms. First defendant has expired during pendency of the suit and the suit stands abated as far as first defendant is concerned. Order in terms of consent terms.

2. Mr.Mehta appearing for Municipal Authorities namely defendants 5, 6 and 7 objects to the consent terms providing that defendants 5 to 7 would withdraw the stop work notice dated 8th October 2003. In his submission, if the suit is withdrawn as against 5 to 7, as provided in the consent terms, then there is no question of taking any orders or directions against the Municipal Corporation of Greater Bombay. Moreso, by terms to which the Municipal Corporation is not a party. In any event, he submits that the MCGB exercising powers under the BMC Act, 1881 and the Maharashtra Regional Town Planning Act, 1966, cannot be prevented from exercising it’s statutory powers and enforcing such obligations, as are cast upon them by these enactments. There

is much substance in these contentions. However, it is also the contention of plaintiff and defendants 1, 2 and 4 that the stop work notice was issued on account of order passed by this Court on 8th October 2003. Now that the terms have been arrived at and the order stands vacated, the stop work notice ought to be withdrawn. In my view, it will be open for the plaintiff and defendants 1, 3 and 4 to make appropriate application pointing out that the dispute between them is settled and the order passed by this Court is not surviving and the BMC should withdraw the stop work notice. Needless to state that such application would be considered on it's own merits and in accordance with law. If such an application is made, the BMC is directed to pass appropriate orders thereon obviously after hearing both sides within a period of four weeks from the date of application.

(S.C.DHARMADHIKARI, J.)